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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 120/2024**

WALLMAX INDIA ENTERPRISES PVT LTD

.....Petitioner

Through: Ms. Reena Jain Malhotra, Adv.

versus

AAKASH POLYTECH PVT LTD

.....Respondent

Through: Mr. Shrey Patnaik, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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27.05.2025

1. This is a petition filed under section 11 of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties arising out of Master Sub-Supply Agreement dated 15.05.2018.
2. In the present case, the respondent was supplying materials like Rubber Block Expander, Rubber Black Strip, O Rings, etc. to the petitioner from 2015 to 2019. Accordingly, the said Agreement dated 15.05.2018 was executed between the parties containing arbitration clause being Clause 15 which reads as under:-

“15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of India.

15.2. Any and all disputes or differences between the



Parties hereto arising out of or in connection with this Agreement or its performance shall, so far as it is possible, be settled amicably between the Parties.

15.3. If after thirty (30) Business Days of consultation, the Parties have failed to reach an amicable settlement, on any or all disputes or differences arising out of or in connection with this Agreement or its performance, [after a cooling off period of thirty (30) Business Days], such disputes or differences shall be submitted to arbitration at the request of any Party upon written notice to that effect to the other Parties and such arbitration shall be conducted in accordance with the rules of International Chambers of Commerce (“ICC Rules”). The arbitral proceedings shall be conducted by a panel consisting of three (3) arbitrators. Each Party shall nominate and appoint one arbitrator, and the two appointed arbitrators shall nominate the third arbitrator who shall preside over as Chairman of the arbitral tribunal.

15.4. Appointment of Arbitrators

While submitting the dispute or difference to arbitration in accordance with Clause 15.3 above, the Party so submitting shall, in its notice, specify the name of one arbitrator appointed by it. Within thirty (30) days of the receipt of notice, the other Party to the dispute shall appoint an arbitrator. The third arbitrator shall be nominated by the arbitrators appointed as aforesaid or, failing such



nomination within thirty (30) days of the appointment of one arbitrator by each Party to the dispute, shall be appointed in accordance with the ICC Rules. In the event that a Party to a dispute or difference fails to appoint an arbitrator within thirty (30) days of being called upon to do so by a Party that has appointed arbitrators, such Party shall be entitled to have the remaining arbitrators appointed in accordance with the ICC Rules.

15.5. Language and Venue of Arbitration

The language of the arbitration shall be English. The venue of the arbitration shall be New Delhi, India.

15.6. Award to be Final and Binding

The Parties agree that the award of the arbitrators shall be final and binding upon the Parties, and that none of the Parties shall be entitled to commence or maintain any action in a court of law upon any matter in dispute arising from or in relation to this Agreement, except for the enforcement of an arbitral award granted pursuant to this Clause 15 or to the extent permitted under law.

15.7 Performance of Obligations

During the period of submission to arbitration and thereafter until the granting of the award, the Parties shall, except in the event of termination, continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

15.8. Confidentiality



Neither the Parties nor the members of the arbitration panel may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the remaining Parties.”

3. Since there were disputes between the parties, the petitioner invoked arbitration vide legal notice dated 08.04.2022 and thereafter filed the present petition.
4. Mr. Patnaik, learned counsel for the respondent has raised a preliminary objection regarding the maintainability of the present petition. He states that the disputes arising out of the Agreement is already pending before the Arbitral Tribunal appointed by MSME Facilitation Council, Haryana, Panchkula, wherein the petitioner has participated in those proceedings. Hence, the present petition is not maintainable.
5. He further states that the MSME initiation was dated 01.04.2022 i.e. prior to the initiation by the petitioner.
6. Mr. Patnaik, learned counsel for the respondent relies on the judgment of ***Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790*** and more particularly paras 17, 34, 37 and 40 which read as under:-

“17. Having regard to contentions of the parties, only two issues arise for consideration before this Court, namely:

17.1. (i) Whether the provisions of the Limitation Act, 1963 is applicable to arbitration proceedings initiated under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006?

17.2. (ii) Whether, counterclaim is maintainable in such



arbitration proceedings?

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34. It is also further to be noted that if we do not allow the counterclaim made by the buyer in the proceedings arising out of claims made by the seller, it may lead to parallel proceedings before the various fora. On one hand, in view of beneficial legislation, seller may approach the Facilitation Council for claims, in the event of failure of payment by the buyer under provisions of 2006 Act, at the same time, if there is no separate agreement between the parties for any arbitration in a given case, buyer may approach the civil court for making claims against the seller, or else if there is an agreement between the parties for arbitration in the event of dispute between the parties, parties may seek appointment of arbitrator. At the same time if the seller is covered by definition under micro, small and medium enterprises, seller may approach the Facilitation Council for making claims under the provisions of Micro, Small and Medium Enterprises Development Act, 2006. In such event, it may result in conflicting findings, by various forums.

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37. The 2006 Act contemplates a statutory arbitration when conciliation fails. A party which is covered by the provisions of 2006 Act allows a party to apply to the Council constituted under the Act to first conciliate and then



arbitrate on the dispute between it and other parties. There are fundamental differences in the settlement mechanism under the 2006 Act and the 1996 Act. The first difference is, the Council constituted under the 2006 Act to undertake mandatory conciliation before the arbitration which is not so under the 1996 Act. Secondly, in the event of failure of conciliation under the 2006 Act, the Council or the centre or institution is identified by it for arbitration. The 1996 Act allows resolution of disputes by agreed forum. The third difference is that, in the event of award in favour of seller and if the same is to be challenged, there is a condition for pre-deposit of 75% of the amount awarded. Such is not the case in the 1996 Act. When such beneficial provisions are there in the special enactment, such benefits cannot be denied on the ground that counterclaim is not maintainable before the Council. In any case, whenever buyer wish to avoid the jurisdiction of the Council, the buyer can do on the specious plea of counterclaim, without responding to the claims of the seller. When the provisions of Sections 15 to 23 are given overriding effect under Section 24 of the Act and further the 2006 Act is a beneficial legislation, we are of the view that even the buyer, if any claim is there, can very well subject to the jurisdiction before the Council and make its claim/counterclaim as otherwise it will defeat the very objects of the Act which is a beneficial legislation to micro, small and medium enterprises. Even in cases where



there is no agreement for resolution of disputes by way of arbitration, if the seller is a party covered by Micro, Small and Medium Enterprises Development Act, 2006, if such party approaches the Council for resolution of dispute, the other party may approach the civil court or any other forum making claims on the same issue. If two parallel proceedings are allowed, it may result in conflicting findings.

7. Ms. Malhotra, learned counsel for the petitioner states that the MSME Council is only looking into the invoices of the respondent and not the claims of the petitioner which are arising purely out of the Agreement.
8. I have heard learned counsel for the parties.
9. A perusal of the aforesaid paras of the judgment of **Silpi Industries (supra)** shows that the endeavour of the Court is to avoid multiplicity of proceedings in order to prevent conflicting findings. The MSME Act being a beneficial legislation requires the other parties (even if not an MSME) to agitate its disputes before the Council itself.
10. In the present case, nothing prevented the petitioner from raising all its counter-claims before the MSME appointed Arbitral Tribunal and urge the same. The argument of the petitioner that they presented their counter-claims before the Arbitral Tribunal but the Arbitral Tribunal refused to entertain the same is a ground which the petitioner is entitled to take, if and as and when, the petition under section 34 of Arbitration and Conciliation Act, 1996 is filed by the petitioner but the same does not entitle the petitioner initiate another parallel arbitral proceedings.



11. As per the correspondence handed over by the learned counsel for the petitioner and more particularly the communication dated 06.05.2025, the Award of the MSME Council is yet to be pronounced.
12. Hence, this Court cannot, in the absence of the proposed Award yet to be passed by the MSME appointed Arbitral Tribunal, assume that Arbitral Tribunal would not consider the claim/counter claims of the petitioner.
13. For the said reasons, at this stage, I am unable to entertain the present petition and the same is dismissed.
14. The petitioner is at liberty to avail all its legal rights in accordance with law as and when the situation so arises.
15. The communications handed over in Court today are taken on record.
16. Needless to add, the observations made hereinabove are only for the purpose of adjudicating the present petition.

JASMEET SINGH, J

MAY 27, 2025/DM

Click here to check corrigendum, if any